

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - : S1 20 Cr. 314 (GHW)

ETHAN PHELAN MELZER, :

DEFENDANT. :

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DEFENDANT'S PROPOSED VOIR DIRE

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The defense requests that the Court include the following in its questioning of prospective jurors during jury selection, in addition to the questions typically asked by the Court. The Court is requested to pursue more detailed questioning if a juror's answer reveals that further inquiry is appropriate.

Presumption of Innocence and Burden of Proof

- 1) Does any juror feel that only guilty people are charged with crimes?
- 2) Does any juror feel that because Mr. Melzer is here as a defendant, he must have done something wrong?
- 3) Do you understand that Mr. Melzer is presumed innocent? In other words, if you were asked to render a verdict at this point, it would have to be not guilty. Does that trouble any juror for any reason?
- 4) Does any juror feel uncomfortable following the Court's instruction that Mr. Melzer does not have to prove himself innocent? Does any juror think that the defendant should have to do something to prove that he is innocent?
- 5) Under the law, you must find Mr. Melzer not guilty unless the evidence presented proves his guilt beyond a reasonable doubt. Does this rule trouble you in any way?
- 6) Does any juror think that Mr. Melzer should be required to testify on his own behalf? Does any juror feel that, if Mr. Melzer were not guilty, he would explain himself and testify on his own behalf whether he was required to or not?
- 7) Will it concern you if Mr. Melzer does not testify on his own behalf? Would you expect to hear from Mr. Melzer if he were not guilty?

Criminal system involvement and law enforcement

- 8) Have you or has anyone close to you ever been involved in a criminal case, either as a victim, defendant, witness, or in any other way?
- 9) Are you or is anyone close to you involved in law enforcement?
- 10) Would any juror tend to give more or less credit to the testimony of a government employee or law enforcement witness for any reason? Is yes, please explain.

Military connections

- 11) You will hear evidence that Mr. Melzer, who was then a member of the United States army, discussed harming and killing other military servicemembers. Does anyone feel that this allegation, on its own, would impact your ability to serve as a juror? If so, why?
- 12) Does any juror have any personal connection to the military?
- 13) Are you or any close family member or friend a current or former member of the military?
- 14) Do you have any views about the military, or views about threats or attempts to harm military members, that may impact you as a juror?

Sexual assault

- 15) You will hear evidence that Mr. Melzer and others discussed and made references to sexual assault and rape.
- 16) Has any juror or any juror's close family member or friend had any personal experience with sexual assault or rape?

- 17) Do you have any views about sexual assault or rape, or the discussion of these topics, that may impact you as a juror?

Political/religious beliefs and speech

- 18) You will hear evidence that Mr. Melzer participated in online chats with individuals associated with certain political, religious, and social groups and beliefs. These groups identified themselves as anarchist, Satanic, neo-fascist, neo-Nazi, anti-Semitic, “alt-right,” and jihadist.
- 19) Does any juror have any views about anarchists that might impact you as a juror?
- 20) Does any juror have any views about Satanism that might impact you as a juror?
- 21) Does any juror have any views about fascism that might impact you as a juror?
- 22) Does any juror have any views about neo-Nazism that might impact you as a juror?
- 23) Does any juror have any views about anti-Semitism that might impact you as a juror?
- 24) Does any juror have any views about “alt-right” beliefs or associations that might impact you as a juror?
- 25) Does any juror have any views about jihadist beliefs or associations that might impact you as a juror?
- 26) Does any juror have any views about Mr. Melzer associating himself with or espousing these beliefs that might impact you as a juror?

- 27) Does any juror feel that someone's association with these groups or endorsement of these beliefs impacts the likelihood that the person would commit a crime?
- 28) You will also hear evidence that Mr. Melzer, or those he associated with, praised Adolf Hitler, Nazi Germany, Ted Kaczynski, Usama bin Laden, and al Qaeda. Does any juror have any views about Mr. Melzer's praise for these individuals or organizations that might impact you as a juror?
- 29) You will hear evidence that Mr. Melzer used racial and homophobic slurs and other derogatory, offensive terms in his speech. Will anything about Mr. Melzer's use of these terms impact you as a juror?

Encrypted messaging applications

- 30) You will hear evidence that Mr. Melzer used an encrypted messaging application to communicate with other people online.
- 31) What, if any, encrypted messaging applications has any juror used?
- 32) Does any juror have any views about the use of encrypted messaging applications that may impact you as a juror?

Gaming

- 33) You will hear evidence that Mr. Melzer used certain online gaming platforms.
- 34) What, if any, online gaming platforms has any juror used?
- 35) Does any juror have any views about the use of online gaming platforms that may impact you as a juror?

Social media and online activity

- 36) You will hear evidence that Mr. Melzer used particular social media sites or applications, including Discord, Telegram, and WhatsApp.
- 37) Does any juror have any views about Discord, Telegram, WhatsApp, or the use of social media sites or applications that may impact you as a juror?
- 38) Has any juror become familiar with or used these specific sites or applications?
- 39) Is there anything about that familiarity or use that would impact you as a juror?
- 40) Do you participate in any online activity or social media?
- 41) What social media sites do you use?

Dated: New York, New York
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Respectfully submitted,
Federal Defenders of New York, Inc.

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